REMARKS

Applicant gratefully acknowledges the Examiner's acknowledgment of receipt of certified copies of priority documents submitted in connection with Applicant's claim of foreign priority.

Claims 1-7 are currently pending in the application. Claim 7 has been amended to correct an informality by changing "used" to "user" in line 10 of the claim. Additional amendments have been made to Claims 3, 5, and 7 in response to the Examiner's comments. Support for such amendments may be found in the drawings at Figure 3, in the Specification at page 8, line 24 – page 9, line 6, and in the Specification at page 9, lines 15-26. No new matter has been added.

The claimed invention provides a system, a method, a computer program, and a server for use in on-line shopping to enable items in a shopping cart stored in a shopping cart database to be presented to a shopper sequentially rather than simultaneously — *i.e.*, one-by-one rather than all at once — for confirmation of purchases. A shopper's intent to purchase may thus be separately confirmed for each item in a shopping cart at the time of checkout, with items not confirmed being returned to the shopping cart for purchase at a later time instead of being canceled. As a result, a shopper may choose to keep some items in the shopping cart while purchasing others. In addition, when seeking to purchase an item of which limited quantities are available, a shopper who does not want to purchase such item right away may obtain priority for purchasing it at a later time by maintaining the item in his or her shopping cart.

To that end, the claimed invention provides a marketer server 10, a network 20 which may be the Internet, at least one user terminal 30, a shopping cart database 40, a recording medium 50, and an item database 60. A shopper, or user, is thereby enabled to: operate a user terminal 30 to connect to the marketer server 10; select an item to purchase; and cause the marketer server 10 to place the item in the user's shopping cart which is stored in the shopping cart database 40. The recording medium 50 stores the program according to which the marketer server 10 executes these processes. Upon completion of the shopping session, the user may examine the shopping cart and choose to "purchase while examining items one at a time." (Figure 5) The marketer server 10 then removes one of the items from the shopping

cart and presents it to the user who determines, one item at a time, whether to purchase the item at that time or to wait until later. (Figure 6a) Once the choice is made as to one item, the next item in the shopping cart, if any, is presented to the user for confirmation. (Figure 6b) The process continues until the user has reviewed each item in the shopping cart. Figures 6a and 6b (*see* page 9, below) show that the one-by-one presentation of shopping cart items for confirmation of purchase, according to the claimed invention, may be effective even with a user terminal that has a display significantly smaller than the display of a conventional personal computer.

Claims 1-7 have been rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,032,130 to Alloul et al. in view of U.S. Patent Application No. 2001/0011239 to Kondoh et al. Applicants respectfully traverse on the basis that the claimed invention is not suggested by Alloul et al. or Kondoh et al., either individually or in combination, because *inter alia* neither reference teaches the sequential presentation of items at the time of checkout for item-by-item confirmation of purchases, as shown in Figures 6a and 6b and as discussed herein.

With regard to independent Claims 1, 3, 5, and 7, Applicants respectfully submit that Alloul et al. do not teach "an item database for storing information on items on the market" (Office Action at 2) in the manner of Claim 1 or the amended versions of Claims 3, 5, and 7. As a result, Alloul et al. do not teach "providing said user terminal with item information stored in said item database." (Office Action at 2) Such "item database" is accessible from the user terminal over a network by means of the marketer server, while Alloul et al. provide for "a mass storage device storing *locally* at least one electronic multimedia catalog." (Alloul et al., Claim 1, lines 16-17; Alloul et al., Claim 15, lines 36-37; Alloul et al., Claim 24, lines 44-45 (emphasis added); *see also* Alloul et al., Claim 21, lines 22-25) The disclosure of Alloul et al. further emphasizes that, with narrowly drawn exceptions, product information is maintained locally and is not accessed over a network:

> The mass storage means are also charactized by the very large volumes of data that may be stored on them (e.g., prefereably, at least 500 Mb) and by the fact that they are part of the computer system at the time the data is accessed, *in opposition with the network transmitted data* which comes from a remote location, at a relatively low rate. Such mass storage means may be a hard-disk drive, a CD-ROM drive in combination with a CD-ROM (or more generally

> an optical disk reader in combination with an optical disk) or a magnetic tape reader in combination with a magnetic tape that allow fast data retrieval, e.g. at least 1 Mb per second.

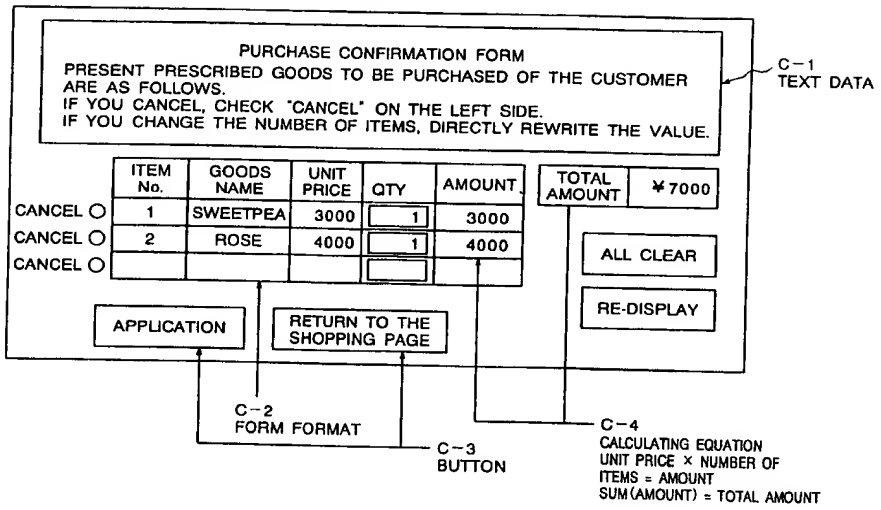
(Alloul et al., column 4, lines 52-63 (emphasis added)) While Alloul et al. do teach some use of a communication network, such use of such network according to the teaching of Alloul et al. is narrowly limited to making transactions and obtaining transaction-related information, such as current prices, involving items stored in the local database. Alloul et al do not provide for access over a network to a database of items available for purchase:

> The communication network 34 is needed in order to allow the purchasing terminals 10 and 38 to access remotely the transaction server for getting the small volumes of product time-variable information and for on-line produce ordering.
>
> The communication network 40 is employed for downloading product-related information, such as prices and availability, from the suppliers' servers to the transaction server in order to update the transaction server's product database.

(Allouel et al., column 9, lines 27-36) Thus, an "item database" is not merely outside the scope of the disclosure of Alloul et al., but it would actually be viewed as undesirable according to the teachings of Alloul et al. Applicants respectfully submit that Allouel et al. do not teach an "item database."

Also with regard to Claims 1, 3, 5, and 7, the Examiner has acknowledged that,"Alloul does teach a confirmation list," but "Alloul does not teach that the items are presented sequentially." (Office Action at 3) The Examiner seeks to rely on Figure 7 of Kondoh et al. to make up for the deficiency of Alloul et al.; however, the referenced figure from Kondoh et al. (a) teaches a list in which all items are presented simultaneously, rather than sequentially and also (b) teaches a "cancel" feature without suggesting a way to purchase some items while leaving others in the shopping cart for later:

FIG. 7



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(Kondoh et al., Figure 7) By contrast, Figures 6a and 6b of the claimed invention show the full screen display of each item one-by-one, sequentially:

Fig. 6a

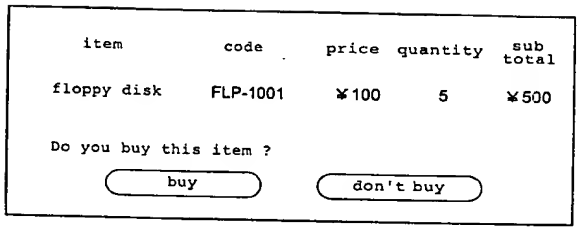
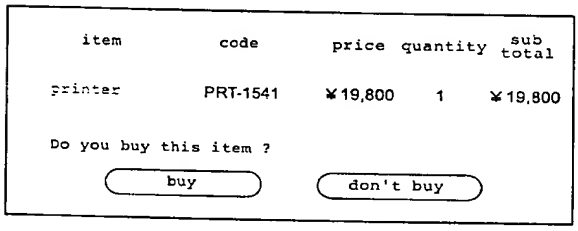


Fig. 6b



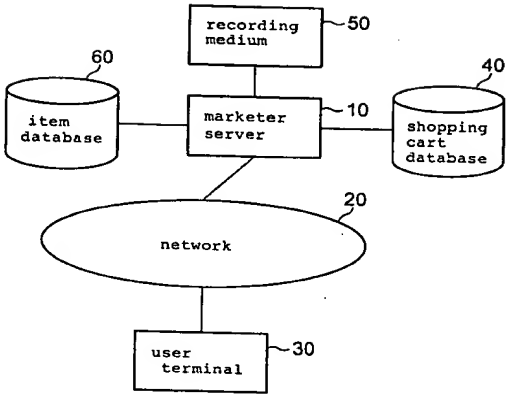
(Figures 6a and 6b) The ability to purchase some items while leaving others in the shopping cart for later is a principal aspect of Claims 1, 3, 5, and 7 and is a principal reason for displaying shopping cart items sequentially, as explained above and in the Specification:

> [I]n a network marketing system *of the prior art* in which a purchase application is performed for all items that are held in a shopping cart in a single operation, the shopping cart is used for holding only those items that the user has actually decided to purchase.

(Specification at page 4, line 25 – page 5, line 4 (emphasis added)) Thus, even assuming *arguendo* that "it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Kondoh into the invention of Alloul" (Office Action at 3), the result would not have been Claims 1, 3, 5, or 7 of the claimed invention.

Finally, while acknowledging that "the cited prior art does not teach that a marketer server performs one or a number of the above-identified tasks" (Office Action at 3), the Examiner has declared without citation of any reference that "at the time the invention was made, it would have been obvious to one of ordinary skill in the art to have a marketer server perform the tasks listed above." (Office Action at 3) Applicants respectfully traverse on the basis that the Examiner's comments in this regard constitute impermissible hindsight as well as an improper assertion of technical fact in an area of esoteric technology without support by citation of any reference work. (*See* M.P.E.P. § 2144.03, citing *In re Ahlert*, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 422-21 (C.C.P.A. 1970)). The Examiner has also asserted that "Applicant [sic] has not disclosed that a marketer server provides an advantage, is used for a particular purpose or solves a stated problem." (Office Action at 3) To the contrary, however, the disclosure of Alloul et al. clearly shows that the marketer server 10 serves as a nexus of the claimed invention, connecting the shopping database 40, the recording medium 50, the item database 60 and, via the network 20, the user terminal 30. (*See* Figure 3; Specification at 9, lines 15-26; Claims 1, 3, 5, and 7) The claimed invention could not function without the marketer server:

Fig. 3



(Figure 3) Claim 7 is currently amended to clarify the role of the marketer server.

With regard to dependent Claims 2, 4, and 6, the Examiner has found that "Alloul teaches that the user terminal establishes a right to purchase preferentially a particular item when said user saves the item in said shopping cart." (Office Action at 4) The passage of the disclosure of Alloul et al. cited by the Examiner in support of this assertion, however, does not include any discussion as to whether users may obtain preference in purchasing an item in short supply. For that reason, Applicants respectfully traverse the rejection of Claims 2, 4, and 6.

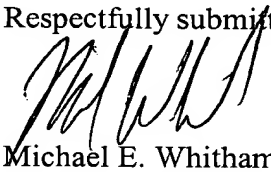
Applicants respectfully submit that the claimed invention is not suggested by Alloul et al. or Kondoh et al., either individually or in combination.

Conclusion

In view of the foregoing, it is respectfully requested that the application be reconsidered, that Claims 1-7 be allowed, and that the application be passed to issue. Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

A provisional petition is hereby made for any extension of time necessary for the continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees for the petition or for entry of this amendment to Attorney's Deposit Account No. 50-2041 (Whitham, Curtis & Christofferson P.C.).

Respectfully submitted,



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